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7
8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 BEAR RIVER BAND OF ROHNERVILLE
RANCHERIA, a federally recognized Indian Tribe,

11
12 Plaintiff,

13 vs.

14 STATE OF CALIFORNIA, and GAVIN NEWSOM
IN HIS OFFICIAL CAPACITY AS GOVERNOR
15 CALIFORNIA

16 Defendants.
17

Case No.:

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

18 Plaintiff, the Bear River Band of Rohnerville Rancheria ("Bear River"), by and through its
19 attorneys of record herein, complains and alleges as follows:

20 **JURISDICTION**

21 1. Plaintiff, the Bear River Band of Rohnerville Rancheria ("Bear River"), alleges
22 that the State of California ("State") has failed to negotiate in good faith under the Indian Gaming
23 Regulatory Act ("IGRA"), 25 U.S.C. § 2701, *et seq.*, in response to Bear River's request for a
24 new class III Gaming Compact to replace Bear River's current class III Gaming Compact.
25 Therefore, this Court has original jurisdiction over the subject matter of Bear River's action
26 pursuant to 28 U.S.C. §§ 1331 and 1362, in that Bear River's claims arise under, *inter alia*, 25
27 U.S.C. § 2710(d)(7)(A)(i).

28 2. Defendant State of California affirmatively has waived its sovereign immunity to

1 this suit pursuant to Calif. Gov't. Code § 98005.

2 **VENUE**

3 3. Venue in this action lies in this District pursuant to 28 U.S.C. § 1391(b) and Calif.
4 Code of Civ. Proc. § 401(a), in that the Attorney General of California maintains an office in the
5 City and County of San Francisco, California, within the Northern District of California.

6 **PARTIES**

7 4. Plaintiff Bear River is a sovereign federally-recognized Indian Tribe that
8 maintains government-to-government relations with the United States.

9 5. Defendant is the State of California.

10 6. Defendant Gavin Newsom is the duly-elected Governor of the State of California,
11 and is sued in his official capacity.

12 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

13 7. Bear River realleges each of the allegations set forth in Paragraphs 1 – 6 above,
14 and by this reference incorporates each such allegation herein as if set forth in full.

15 8. Bear River is the beneficial owner of and exercises governmental authority over
16 the Rohnerville Rancheria ("Rancheria") in Humboldt County, California, the lands of which the
17 federal government holds in trust for Bear River. The Rancheria is "Indian country" within the
18 meaning of 18 U.S.C. § 1151, and the lands of the Rancheria are "Indian lands" as defined in 25
19 U.S.C. § 2703(4), having been taken into trust by the United States as "restored lands" pursuant
20 to 25 U.S.C. § 2719(b)(1)(B)(iii).

21 9. Bear River and the State entered into a Compact pursuant to IGRA that took effect
22 on or about May 16, 2000 ("1999 Compact"). If not renegotiated or replaced by December 31,
23 2020, the Compact's term automatically will be extended until June 30, 2022, unless the parties
24 have agreed to an earlier termination date.

25 10. Pursuant to its 1999 Compact, Bear River owns and operates the Bear River
26 Casino & Hotel on the Rancheria.

27 11. IGRA categorizes gaming into three "classes": social games for prizes of minimal
28 value, and ceremonial games ("class I"); bingo and games similar to bingo, including electronic,

1 computer or other technologic aids to such games, and non-banking card games, to the extent
2 such games either are expressly authorized or not expressly prohibited by State law ("class II");
3 and all other forms of gaming, including slot machines ("Gaming Devices") and "banked games"
4 (e.g., blackjack, in which the "house" or "bank" takes on all comers, paying all winners and
5 collecting from all losers) ("class III").

6 12. IGRA preempts whatever jurisdiction the State may have had to enforce its
7 gambling laws in Indian country. Nonetheless, IGRA provides that if a Tribe desires to conduct
8 class III gaming on its Indian lands, the Tribe must request that the State enter into negotiations
9 for a tribal-state compact setting forth the terms and conditions under which the Tribe may
10 conduct Gaming Activities, a term that IGRA does not specifically define, but that the U.S.
11 Supreme Court has: "... what goes on in a casino – each roll of the dice and spin of the wheel."
12 *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 783 (2014). Consistent with *Bay Mills*,
13 in this Complaint the term "Gaming Activities" shall refer to the class III gaming that is
14 authorized in the current and any future Compact between the State and Bear River.

15 13. In response to a Tribe's request to negotiate (or renegotiate) the terms of a
16 Compact, the State is obligated to negotiate in good faith about the Tribe's request. 25 U.S.C.
17 § 2710(d)(3)(A).

18 14. IGRA, 25 U.S.C. § 2710(d)(3)(C), provides that a compact, may include
19 provisions relating to –

20 (i) the application of the criminal and civil laws and regulations of the Indian
21 tribe or the State that are directly related to, and necessary for, the licensing and regulation of
22 such [class III gaming] activity;

23 (ii) the allocation of criminal and civil jurisdiction between the State and the
24 Indian tribe necessary for the enforcement of such laws and regulations;

25 (iii) the assessment by the State of such [class III gaming] activities in such
26 amounts as are necessary to defray the costs of regulating such [class III gaming] activity;

27 (iv) taxation by the Indian tribe of such [class III gaming] activity in amounts
28 comparable to amounts assessed by the State for comparable activities;

- 1 (v) remedies for breach of contract;
- 2 (vi) standards for the operation of such [class III gaming] activity and
- 3 maintenance of the gaming facility, including licensing; and
- 4 (vii) any other subjects that are directly related to the operation of [class III
- 5 gaming] activities.

6 15. IGRA does not authorize the State or any of its political subdivisions to impose a
7 tax on a Tribe via or as a condition of entering into a class III gaming compact, but IGRA permits
8 the State to negotiate the payment of fees to reimburse the State for its regulatory costs incurred
9 in connection with a compact. 25 U.S.C. § 2710(d)(4). Under IGRA, the Court is to consider
10 any demand by the State for direct taxation of the Indian tribe or of any Indian lands as evidence
11 that the State has not negotiated in good faith.

12 16. Section 4.3.2.2(a) of Bear River's 1999 Compact with the State of California
13 authorizes Bear River to operate up to two Gaming Facilities, up to 2,000 Gaming Devices (*i.e.*,
14 slot machines), banked and percentage card games, and games and devices that State law
15 authorizes to the California State Lottery.

16 17. Bear River did not operate any Gaming Devices on September 1, 1999, and thus
17 Bear River's Compact does not currently obligate Bear River to pay into the Indian Gaming
18 Special Distribution Fund ("SDF"), which was created by the State Legislature as, in part, the
19 source for compensating the State for its costs incurred in connection with the implementation
20 and administration of the Compact.

21 18. Bear River's 1999 Compact created a statewide pool of Gaming Device licenses
22 from which Bear River and other California Tribes with similar Compacts could draw licenses to
23 operate Gaming Devices in excess of the greater of 350 or the number of Gaming Devices a
24 given Tribe operated on September 1, 1999, to a maximum of 2,000 Gaming Devices. Under
25 Bear River's 1999 Compact, Bear River does not need Gaming Device licenses to operate up to
26 350 Gaming Devices, but if Bear River were to seek to operate more than 350 Gaming Devices,
27 Bear River would have to request to draw licenses from the statewide pool, make a one-time pre-
28 payment of \$1,250 for each license drawn, and pay an annual fee of between \$900 and \$4,350 for

1 each license in excess of 350 licenses. Under Bear River's 1999 Compact, all fees paid for
2 Gaming Device licenses are to be deposited into the Indian Gaming Revenue Sharing Trust Fund
3 ("RSTF"), from which the State is to disburse up to \$1.1 million per year to each federally
4 recognized California Tribe that operates between 0 and 350 Gaming Devices.

5 19. On or about March 13, 2014, Bear River formally notified the State that it desired
6 to enter into negotiations for a new Compact to replace Bear River's 1999 Compact. To facilitate
7 those negotiations, Bear River joined with a group of other Tribes with materially identical 1999
8 Compacts to form the 1999 Compact Tribes Steering Committee ("CTSC") and participate as a
9 group in negotiating new compacts to replace their 1999 Compacts.

10 20. After several months of preliminary negotiations about the structure and protocols
11 to be observed by the parties during compact negotiations between the CTSC Tribes, including
12 Bear River, and the State, formal negotiations between the CTSC Tribes and the State
13 commenced in or about December, 2014. The last negotiating session in which Bear River
14 participated with the State's negotiating team occurred on April 23, 2020.

15 21. The negotiations between the State and the CTSC Tribes in which Bear River
16 participated produced agreements in principle on issues including, but not limited to, the scope of
17 Gaming Activities authorized, licensing procedures and criteria, the respective roles of the State
18 Gaming Agency and the Tribe's Gaming Agency, Minimum Internal Control Standards, and
19 facility inspections and testing of Gaming Devices, all of which Bear River and the State agreed
20 are proper subjects of negotiation under IGRA. However, Bear River and the State failed to
21 reach complete agreement on the terms of a new Compact, due to the State's insistence on
22 including in a new Compact provisions that Bear River contended are not proper subjects of
23 negotiation under IGRA, because those provisions are not directly related to and necessary for
24 the regulation and licensing of Gaming Activities, are not standards for the operation of Gaming
25 Activities or maintenance of a Gaming Facility, and are not otherwise directly related to the
26 operation of Gaming Activities.

27 22. On or about July 10, 2020, Bear River notified the State in writing that Bear River
28 would be submitting a last, best offer of the terms of a new Compact to replace Bear River's 1999

1 Compact. In that letter, Bear River gave the State until and including July 31, 2020 to respond to
2 that offer. On July 14, 2020, Bear River provided the State with the actual draft of Bear River's
3 last, best written offer of a new Compact to replace Bear River's 1999 Compact.

4 23. On or about July 15, 2020, the State sent Bear River a letter in which the State,
5 *inter alia*, acknowledged receipt of Bear River's last, best offer of the terms of a new Compact to
6 replace Bear River's Compact, and requested that Bear River agree that the State could have until
7 August 31, 2020 to respond to that offer.

8 24. On or about July 17, 2020, Bear River responded to the State's request for
9 additional time to respond to Bear River's last, best offer of a new Compact to replace Bear
10 River's 1999 Compact by declining to accede to the State's request due to the short time
11 remaining on the term of Bear River's 1999 Compact, unless the State would agree to extend the
12 term of Bear River's 1999 Compact by two years and submit that Compact Amendment to the
13 Legislature for ratification during the current session, in which event Bear River would agree to
14 extend the State's time to respond to Bear River's last, best offer of a new Compact by sixty days,
15 rather than the thirty days the State had requested.

16 25. On or about July 31, 2020, the State sent Bear River a letter rejecting Bear River's
17 last, best offer of a new Compact to replace Bear River's 1999 Compact or to extend the term of
18 Bear River's 1999 Compact, thereby continuing to insist on including the following provisions in
19 any new Compact with Bear River:

20 a. If Bear River ever is required to pay into the SDF, payment into the SDF
21 of more than is necessary to reimburse the State's for its regulatory costs incurred in connection
22 with Bear River's Compact;

23 b. If Bear River ever is required to pay into the RSTF, requiring payment into
24 the RSTF of more than is needed to distribute up to \$1.1 million per year to each federally
25 recognized California Indian Tribe operating fewer than 350 Gaming Devices;

26 c. Allocation of any surplus in the RSTF to the State's proposed Tribal
27 Nations Grant Fund ("TNGF");

28 d. A definition of "Gaming Facility" that includes structures and other

1 improvements in which no Gaming Activities occurs;

2 e. A definition of "Gaming Operation" that includes activities or functions
3 that are not, themselves, Gaming Activities, or are not directly related to or necessary for the
4 operation or regulation of Gaming Activities or the maintenance of Gaming Facilities;

5 f. Requiring Bear River to enact an ordinance that not only prohibits
6 workplace discrimination, harassment and retaliation and creates remedies in money damages for
7 such claims, but also requiring Bear River to carry at least \$3 million in employment practices
8 insurance, notwithstanding that 42 U.S.C. §§ 2000e(b) ("Title VII") and 12111(5)(b) ("ADA")
9 expressly exclude federally recognized Indian Tribes from the definition of "employer;"

10 g. Generally prohibiting Bear River's Gaming Operation from cashing
11 various kinds of government checks;

12 h. Requiring compliance with California's minimum wage law and
13 regulations for all Gaming Operation employees, including for employees not directly involved
14 in the operation or regulation of Gaming Activities or the maintenance of Gaming Facilities;

15 i. Requiring Bear River to carry \$10 million in liability insurance, and to
16 waive its sovereign immunity to, and create remedies in money damages for, claims for personal
17 injury, bodily injury or property damage sustained on the Reservation while not participating in
18 Gaming Activities;

19 j. Requiring Bear River to withhold and pay over to the State California
20 income taxes from the wages of all Gaming Operation employees except for enrolled Tribal
21 members residing on the Reservation and other Native Americans who opt out of state income
22 tax withholding;

23 k. Requiring Bear River to enact an ordinance or otherwise to require Bear
24 River and/or its Gaming Operation Employees to honor California state court spousal and child
25 support orders;

26 l. Requiring Bear River to enact a new Tribal Labor Relations Ordinance
27 dictated by the State that would subject Bear River to a labor-management relations regime
28 unlike that applicable to any other non-Tribal California employer over which the National Labor

1 Relations Board asserts jurisdiction;

2 m. Insisting on extending the State's environmental laws to Bear River's
3 Reservation, and requiring negotiation and, if necessary, arbitration of binding and enforceable
4 mitigation agreements with local jurisdictions; and

5 n. Insisting on defining "Gaming Employees" to include Gaming Operation
6 Employees having no direct involvement in the operation or regulation of Gaming Activities.

7 26. The State did not offer Bear River any meaningful consideration, in the form of
8 substantial concessions on issues about which the State otherwise is not obligated to negotiate in
9 good faith under IGRA, in exchange for the concessions demanded of Bear River as enumerated
10 in Paragraph 25 above.

11 **FIRST CLAIM FOR RELIEF**

12 **State's Failure To Negotiate In Good Faith By Insisting On Inclusion In Compact Of**
13 **Provisions That Are Not Proper Subjects Of Negotiation Under IGRA**

14 27. Bear River hereby realleges each of the facts alleged in Paragraphs 1–26 above,
15 and by this reference incorporates each such reference herein as if set forth in full.

16 **COUNT ONE**

17 **State's Insistence That Bear River Make Excessive Payments Into**
18 **The Indian Gaming Special Distribution Fund**

19 28. Throughout Bear River's negotiations for a new Compact, the State insisted that if
20 Bear River were to have to pay into the SDF, Bear River would have to pay more into the SDF
21 than is necessary to reimburse the State for its actual and reasonable costs that are directly related
22 to regulation of Bear River's Gaming Activities.

23 29. By insisting upon the payment of fees that exceed what is necessary to defray the
24 State's legitimate costs of exercising its regulatory authority under a new Compact, the State
25 seeks to impose a tax, fee, charge or other assessment on Bear River's Gaming Activities, and
26 thus the State failed to negotiate in good faith.

27 **COUNT TWO**

28 **State's Insistence That Bear River Make Excessive Payments Into**

The Indian Gaming Revenue Sharing Trust Fund

1
2 30. Throughout Bear River's negotiations for a new Compact, the State insisted that if
3 Bear River were to be required to pay into the RSTF, Bear River must pay into the RSTF more
4 than would be needed to distribute \$1.1 Million per year to each California Tribe operating fewer
5 than 350 Gaming Devices when Bear River's payments are combined with other Tribes' payments
6 into the RSTF.

7 31. By insisting that Bear River pay into the RSTF more than is needed to distribute
8 \$1.1 million per year to each California Tribe operating fewer than 350 Gaming Devices, the
9 State seeks to impose a tax, fee or assessment on Bear River's Gaming Activities that is
10 impermissible under 25 U.S.C. § 2710(d)(4), and thus the State has failed to negotiate in good
11 faith.

COUNT THREE

State's Insistence On Inclusion Of The State-Created Tribal Nations Grant Fund

12
13
14 32. Throughout Bear River's negotiations for a new Compact, the State insisted, over
15 Bear River's continuing objections, that a new Compact must include a provision allowing for the
16 transfer of any surplus in the RSTF to a State-created Tribal Nations Grant Fund ("TNGF"), from
17 which a State-created administrative body, without input from Bear River but using funds
18 potentially contributed in part by Bear River, would award grants on a competitive basis to Tribes
19 with small or no gaming operations, subject to various restrictions, including, *inter alia*, that the
20 grants may not be used for any gaming-related purpose.

21 33. The TNGF is not a proper subject of negotiation under 25 U.S.C. § 2710(d)(3)(C).

22 34. By insisting that Bear River agree to include the TNGF in a new Compact and that
23 Bear River's potential future payments into the RSTF could be allocated to the TNGF if the RSTF
24 were to contain more money than necessary to distribute \$1.1 million per year to each RSTF-
25 eligible Tribe, the State demanded direct taxation of Bear River without offering meaningful
26 consideration in return, and thus constituted a failure by the State to negotiate in good faith.

27 35. Although Bear River objected throughout the negotiations that the TNGF is not a
28 proper subject of negotiation under IGRA unless the State were to offer meaningful consideration

1 in the form of a substantial concession on an issue about which the State is not otherwise
2 obligated to negotiate in good faith, Bear River joined in a counter-proposal to the State to create
3 a second RSTF ("RSTF II") that would accomplish the objective of making more money
4 available for distribution to RSTF-eligible Tribes, but without involving the TNGF. Although
5 the State claimed several times to be willing to consider that proposal, the State never provided a
6 formal response to that proposal.

7 **COUNT FOUR**

8 **State's Insistence That "Gaming Facility" Be Defined To Include Structures And Other**
9 **Areas Of The Reservation In Which No Gaming Activities Occur**

10 36. Throughout Bear River's negotiations for a new Compact, the State insisted upon
11 defining "Gaming Facility" to include not only structures in which Gaming Activities are
12 conducted, but also structures and other improvements on the Reservation in which no Gaming
13 Activities occur.

14 37. By insisting on including in the definition of "Gaming Facility" structures or areas
15 of the Reservation within or upon which no Gaming Activities or activities directly related to
16 Gaming Activities are conducted, the State's proposed definition of "Gaming Facility" neither is
17 directly related to or necessary for the regulation and licensing of Gaming Activities, nor
18 establishes a standard for operation of Gaming Activities or maintenance of Bear River's Gaming
19 Facilities, nor is otherwise directly related to the operation of Gaming Activities, and thus is not a
20 proper subject of negotiation under IGRA. Therefore, the State's insistence on including such a
21 provision constituted a failure by the State to negotiate in good faith.

22 **COUNT FIVE**

23 **State's Insistence That "Gaming Operation" Be Defined To Encompass Activities Or**
24 **Functions Not Directly Related To Or Necessary For The Regulation And Licensing Or**
25 **Establishment of Standards for the Operation Of**
Gaming Activities or Maintenance of Gaming Facilities

26 38. Throughout Bear River's negotiations for a new Compact, the State insisted upon
27 defining "Gaming Operation" to include not only the actual operation of Gaming Activities and
28 activities directly related to the operation of Gaming Activities and maintenance of Bear River's

1 Gaming Facility, but also activities and areas of the Reservation that are not directly related to or
2 necessary for the regulation and licensing of Gaming Activities, or the operation of Gaming
3 Activities or maintenance of Gaming Facilities.

4 39. By insisting on defining "Gaming Operation" to include activities and areas of the
5 Reservation that are not directly related to or necessary for the regulation and licensing of
6 Gaming Activities or that establish standards for the operation of Gaming Activities or
7 maintenance of Bear River's Gaming Facilities, the State insisted upon including in a new
8 Compact a provision that is not a proper subject of negotiation under IGRA, which insistence
9 constituted a failure by the State to negotiate in good faith.

10 **COUNT SIX**

11 **State's Insistence That Bear River Create Remedies In Money Damages For Workplace
12 Discrimination, Harassment And Retaliation**

13 40. As a federally recognized Indian Tribe, Bear River is expressly excluded from the
14 definition of "employer" under Title VII of the Civil Rights Act of 1964, and the Americans with
15 Disabilities Act, and federal courts have held that federally recognized Indian Tribes are not
16 subject to private lawsuits for money damages under those and various other federal statutes
17 dealing with workplace discrimination.

18 41. Notwithstanding federal statutes that exclude Bear River from the definition of
19 "employer," and federal court decisions holding that Tribes are not subject to private suit for
20 money damages under those and other statutes dealing with workplace discrimination, the State
21 insisted on including in a new Compact with Bear River the requirement that Bear River carry \$3
22 million in employment practices liability insurance, and enact a tribal ordinance that not only
23 prohibits workplace discrimination, harassment and retaliation, but also creates remedies in
24 money damages for all Gaming Operation employees claiming to have been subjected to same,
25 including employees not directly involved in the operation of Gaming Activities or maintenance
26 of a Gaming Facility.

27 42. The State's insistence that Bear River carry \$3 million in employment practices
28 liability insurance and enact a tribal ordinance that both prohibits workplace discrimination,

1 harassment and retaliation and creates remedies in money damages for claimants alleging such
2 wrongful acts, is not directly related to and necessary for the regulation and licensing of Gaming
3 Activities, is not a standard for the operation of Gaming Activities or maintenance of Gaming
4 Facilities, and is not otherwise directly related to the operation of Gaming Activities, and thus is
5 not a proper subject of negotiation under 25 U.S.C. § 2710(d)(3)(C), and the State's insistence on
6 including such a provision in a new Compact constituted a failure by the State to negotiate in
7 good faith.

8 **COUNT SEVEN**

9 **State's Insistence On Restrictions Against Cashing Government Checks**

10 43. Throughout Bear River's negotiations for a new Compact, the State insisted on
11 including a provision prohibiting Bear River's Gaming Operation from cashing, except for Bear
12 River's tribal members, any check drawn against a federal, state, county, or city fund, including,
13 but not limited to, Social Security, unemployment insurance, disability payments, or public
14 assistance payments.

15 44. Cashing checks is not directly related to and necessary for the regulation and
16 licensing of Gaming Activities, is not a standard for the operation of Gaming Activities or
17 maintenance of Bear River's Gaming Facility, and is not otherwise directly related to the
18 operation of Gaming Activities, and thus is not a proper subject of negotiation under IGRA, and
19 the State's insistence on including such a provision in a new Compact constituted a failure by the
20 State to negotiate in good faith.

21 **COUNT EIGHT**

22 **State's Insistence That Bear River Comply With California's Minimum Wage Law
23 And Regulations**

24 45. Although Bear River is subject to the federal Fair Labor Standards Act,
25 throughout Bear River's negotiations for a new Compact, the State insisted on including a
26 provision requiring that Bear River comply with California's minimum wage law and
27 implementing regulations for all Gaming Operation employees.

28 46. California's minimum wage law and implementing regulations are not directly

1 related to and necessary for the regulation and licensing of Bear River's Gaming Activities, are
2 not standards for the operation of Gaming Activities or maintenance of Bear River's Gaming
3 Facilities, and are not otherwise directly related to the operation of Gaming Activities, and thus
4 are not proper subjects of negotiation under IGRA, and the State's insistence on including such a
5 provision constituted a failure by the State to negotiate in good faith.

6 **COUNT NINE**

7 **State's Insistence That Bear River Enact A New Tort Liability Ordinance And Procedures**
8 **For Remedies For Injuries Unrelated To Bear River's Gaming Activities**

9 47. Throughout Bear River's negotiations for a new Compact, the State insisted on
10 including provisions requiring Bear River to obtain \$10 million in liability insurance and enact an
11 ordinance creating procedures for awarding money damages to persons claiming to have
12 sustained bodily injury, personal injury or property damage on or near Bear River's Gaming
13 Facility, whether or not under circumstances involving participation in or operation of Bear
14 River's Gaming Activities.

15 48. Requiring creation of remedies in money damages for bodily injury, personal
16 injury and property damage other than that sustained while participating in Gaming Activities or
17 caused by equipment used in conducting Gaming Activities is not a proper subject of negotiation
18 under 25 U.S.C. § 2710(d)(3)(C).

19 **COUNT TEN**

20 **State's Insistence That Bear River Collect And Remit State Taxes On Gaming Operation**
21 **Employees**

22 49. Throughout Bear River's negotiations for a new Compact, the State insisted on
23 including provisions requiring Bear River to withhold and remit to the State from the wages of all
24 persons employed at the Gaming Operation or Gaming Facility all amounts due to the State under
25 the California Unemployment Insurance Code. With three exceptions (Bear River tribal
26 members living on the Rancheria, tribal members living on other tribes' reservations, and tribal
27 members who request to opt out of tax withholding), the State also insisted that Bear River
28 withhold from the wages of all Gaming Operation and Gaming Facility employees and remit to

1 the State California income taxes, and file with the California Franchise Tax Board a copy of any
2 information tax return filed with the Secretary of the Treasury, except for returns pertaining to
3 Bear River tribal members living on the Rancheria.

4 50. Withholding and remitting State unemployment taxes and income taxes is not
5 directly related to and necessary for the regulation and licensing of Bear River's Gaming
6 Activities, is not a standard for the operation of Gaming Activities or maintenance of Bear River's
7 Gaming Facilities, and is not otherwise directly related to the operation of Gaming Activities, and
8 thus is not a proper subject of negotiation under IGRA, and the State's insistence on including
9 such a provision constituted a failure by the State to negotiate in good faith.

10 **COUNT ELEVEN**

11 **State's Insistence That Bear River Recognize And Enforce State And Federal Court Child
12 Or Spousal Support Orders Or Judgments Involving Gaming Operation Employees**

13 51. Throughout Bear River's negotiations for a new Compact, the State insisted in
14 various formulations that a new Compact must include provisions requiring Bear River to
15 recognize, enforce or otherwise secure compliance with California and federal court orders or
16 judgments and earnings withholding orders for child or spousal support directed at all Gaming
17 Operation employees.

18 52. Enforcement of spousal and child support obligations is not directly related to and
19 necessary for regulation and licensing of Bear River's Gaming Activities, is not a standard for the
20 operation of Gaming Activities or maintenance of Bear River's Gaming Facility, and is not
21 otherwise directly related to the operation of Gaming Activities, and thus is not a proper subject
22 of negotiation under IGRA, 25 U.S.C. § 2710(d)(3)(C), and the State's insistence on including
23 such a provision in a new Compact constituted a failure by the State to negotiate in good faith.

24 **COUNT TWELVE**

25 **State's Insistence That Bear River Enact A New, State-Dictated Tribal Labor Relations
26 Ordinance**

27 53. When Bear River's 1999 Compact took effect in May, 2000, the National Labor
28 Relations Board had not asserted jurisdiction over tribal government Gaming Activities.

1 54. One of the concessions that the State demanded as a condition to the State's entry
2 into Bear River's 1999 Compact was that Bear River had to provide the State with an.

3 "agreement or other procedure acceptable to the State for
4 addressing organizational and representational rights of Class III
5 Gaming Employees and other employees associated with the
6 Tribe's Class III gaming enterprise, such as food and beverage,
7 housekeeping, cleaning, bell and door services, and laundry
employees at the Gaming Facility or any related facility, the only
significant purpose of which is to facilitate patronage at the
Gaming Facility."

8 55. The only "agreement or other procedure acceptable to the State" under § 10.7 of
9 Bear River's 1999 Compact was a model Tribal Labor Relations Ordinance ("TLRO") appended
10 to the Compact, the terms of which were negotiated directly between a group of California
11 gaming Tribes and representatives of Organized Labor, including the California Labor Federation
12 and a number of its constituent labor unions, and facilitated through the Director of the State's
13 Office of Personnel Management and the then President Pro Tem of the State Senate, John
14 Burton.

15 56. As consideration for Bear River's and other Tribes' agreement to adopt the model
16 TLRO, the State made a substantial concession of unique value to Bear River, to wit: an
17 amendment to Article IV, § 19 of the California Constitution that authorized the Governor to
18 negotiate and the Legislature to ratify tribal-state compacts that grant California Indian Tribes the
19 exclusive right to operate on their Indian lands slot machines, banked and percentage card games,
20 and games and devices permitted by State law to the California Lottery.

21 57. As required by § 10.7 of its Compact, Bear River enacted the required TLRO,
22 submitted it to the State, and has maintained it in effect ever since.

23 58. For more than nine (9) years, the National Labor Relations Board ("NLRB") has
24 asserted jurisdiction over tribal government gaming operations pursuant to the National Labor
25 Relations Act. The NLRB's assertion of jurisdiction has been upheld by the Ninth Circuit Court
26 of Appeals (among others).

27 59. Although the organizational and representational rights of all of Bear River's
28 Gaming Operation employees are fully protected by the National Labor Relations Act and Bear

1 River's own TLRO, when Bear River's negotiations for a new Compact began, the State proposed
2 a new TLRO that would deprive Bear River of some of the rights it has as an "employer" subject
3 to the NLRB's jurisdiction, expand the rights of labor organizations beyond those conferred by
4 the National Labor Relations Act, and subject Bear River to a labor-management relations regime
5 unlike that applicable to any other California employer subject to the NLRB's jurisdiction,
6 including commercial card clubs.

7 60. Although Bear River consistently objected to the State's proposed new TLRO as
8 not being a proper subject for negotiation under IGRA, given that the Tribe's gaming operation is
9 subject to the NLRB's jurisdiction, in an effort to reach an agreement, and contingent upon the
10 State's offer of material consideration in the form of a substantial concession on an issue about
11 which the State is not otherwise obligated to negotiate in good faith, Bear River joined in
12 presenting the State with a revised TLRO as a counterproposal to the State's new proposed
13 TLRO.

14 61. Since first proposing its new TLRO, and despite repeated requests to negotiate
15 about the content of a new TLRO, the State consistently refused to engage in substantive
16 negotiations about the State's new proposed TLRO, and never formally responded to or been
17 willing to negotiate about Bear River's counterproposal for a revised TLRO. Moreover, despite
18 repeated requests, the State never has formally explained why the model TLRO enacted pursuant
19 to § 10.7 of Bear River's 1999 Compact is deficient in any way, and the State never offered any
20 material consideration in the form of substantial concessions of unique value to Bear River about
21 which the State is not otherwise obligated to negotiate in good faith, in return for Bear River's
22 acceptance of either the State's proposed new TLRO or the tribal counter-proposal.

23 62. The State's insistence on imposing upon Bear River a labor-management relations
24 regime unlike that applicable to any other California employer subject to the NLRB's jurisdiction,
25 and that deprives Bear River of rights it would otherwise enjoy under the National Labor
26 Relations Act, is not necessary for and directly related to the regulation and licensing of Bear
27 River's Gaming Activities, does not establish a standard for operation of Bear River's Gaming
28 Activities or maintenance of Bear River's Gaming Facilities, and is not otherwise directly related

1 to the operation of Gaming Activities, and thus is not a proper subject of negotiation under
2 IGRA. The State's insistence on including such a provision in a new Compact constituted a
3 failure by the State to negotiate in good faith.

4 **COUNT THIRTEEN**

5 **State's Insistence On Extending The State's Environmental Laws To Bear River's**
6 **Reservation**

7 63. In enacting IGRA, Congress did not intend that the compacting process be used by
8 States to extend their jurisdiction into matters such as taxation, water rights or environmental
9 regulation. Moreover, in enacting IGRA, Congress did not intend that Tribes should be required
10 to negotiate with cities or counties, only with States.

11 64. Section 10.8.1 of Bear River's 1999 Compact requires Bear River to adopt an
12 ordinance,

13 providing for the preparation, circulation and consideration by the
14 Tribe of environmental impact reports concerning potential off-
15 Reservation environmental impacts of any and all Projects to be
16 commenced on or after the effective date of this Compact. In
17 fashioning the environmental protection ordinance, the Tribe will
18 make a good faith effort to incorporate the policies and purposes of
19 the National Environmental Policy Act ["NEPA"] and the
20 California Environmental Quality Act ["CEQA"] consistent with
21 the Tribe's governmental interests.

22 65. In return for Bear River's agreement to include the above-quoted language in its
23 Compact, the State offered Bear River a material concession of unique value on an issue about
24 which the State was not otherwise obligated to negotiate in good faith, to wit: an amendment to
25 the California Constitution allowing the Governor to negotiate and the Legislature to ratify
26 Tribal-State Compacts authorizing federally-recognized California Indian Tribes the right,
27 exclusive of all other persons and entities, to operate on their Indian lands slot machines, banked
28 and percentage card games, and games and devices authorized to the California State Lottery.

29 66. Since its Compact took effect twenty (20) years ago, the State has never alleged
30 that Bear River has not fully complied with § 10.8.1 or any other provision of Bear River's 1999
31 Compact, or that § 10.8 is inadequate to protect the off-Reservation environment from significant
32 adverse impacts resulting from Projects undertaken by the Tribe, or that renegotiation is

1 necessary to ensure adequate mitigation by the Tribe of significant adverse off-Reservation
2 impacts.

3 67. Throughout Bear River's negotiations for a new Compact, and without offering
4 any Bear River-specific justification or material consideration in the form of a substantial
5 concession of unique value to Bear River on an issue about which the State is not otherwise
6 required to negotiate in good faith, the State insisted that a new Compact require Bear River to,
7 *inter alia*: (a) enact a new ordinance that incorporates "the relevant policies and purposes of
8 NEPA [National Environmental Policy Act] and CEQA [California Environmental Quality Act]
9 consistent with legitimate governmental interests of the Tribe and the State" and requires a much
10 more detailed and comprehensive CEQA-based review than does § 10.8 of Bear River's 1999
11 Compact of the potential significant adverse impacts on the off-Reservation environment of
12 proposed "Projects," even if not directly related to and necessary for the regulation and licensing
13 of Bear River's Gaming Activities, or establishing standards for the operation of Gaming
14 Activities or maintenance of Gaming Facilities, or otherwise directly related to the operation of
15 Gaming Activities; (b) provide wide-ranging notice to the public and State and local government
16 agencies of the environmental review of proposed "Projects"; (c) prior to commencing a Project,
17 offer to negotiate, and if necessary arbitrate, with surrounding local governments and the
18 California Department of Transportation (if a State highway would be impacted) for binding and
19 enforceable agreements to mitigate a proposed Project's off-Reservation environmental and other
20 impacts; and (d) implement the mitigation measures identified in the Tribe's environmental
21 document for the "Project."

22 68. Requiring Bear River to enact a new environmental protection ordinance that
23 incorporates both CEQA and NEPA; to perform a detailed and public analysis of the potential
24 significant effects of a proposed Project on the off-Reservation environment; to negotiate, and if
25 necessary arbitrate, the terms of binding and enforceable mitigation agreements with surrounding
26 local governments and the California Department of Transportation; and thereafter to implement
27 identified mitigation measures, is not directly related to and necessary for the regulation and
28 licensing of Bear River's Gaming Activities, does not establish standards for the operation of

1 Bear River's Gaming Activities or maintenance of Bear River's Gaming Facility, and is not
2 otherwise directly related to the operation of Bear River's Gaming Activities, and thus is not a
3 proper subject of negotiation under IGRA. The State's insistence on including such a provision in
4 a new Compact constituted a failure by the State to negotiate in good faith.

5 **COUNT FOURTEEN**

6 **Insisting On Defining "Gaming Employees" To Include Gaming Operation Employees**
7 **Having No Direct Involvement In The Operation Or Regulation Of Gaming Activities**

8 69. Throughout Bear River's negotiations with the State for a new Compact, the State
9 insisted on including within the definition of "Gaming Employee" personnel such as food and
10 beverage cooks and servers, hotel housekeeping employees, parking attendants and other
11 employees whose duties would not include direct or even indirect involvement in the actual
12 operation or regulation of Gaming Activities. By defining "Gaming Employees" so broadly, the
13 State would bring within the scope of the Compact personnel not directly related to and necessary
14 for the regulation and licensing of Bear River's Gaming Activities, or not otherwise directly
15 related to the operation of Gaming Activities, and thus the State's proposed definition of "Gaming
16 Employees" goes beyond what is a proper subject of negotiation under IGRA, and the State's
17 insistence on including so broad a definition of "Gaming Employees" constituted a failure to
18 negotiate in good faith.

19 **WHEREFORE**, Bear River prays as follows:

20 1. that the Court enter judgment declaring that as to each of Counts One through
21 Fourteen of Bear River's Claim for Relief, the State of California has failed to negotiate in good
22 faith by insisting upon including in a new Compact provisions that are not proper subjects of
23 negotiation under IGRA;

24 2. that the Court order the parties to enter into further Compact negotiations for a
25 period of sixty (60) days from the entry of the Court's judgment, and if the parties are unable to
26 agree to the terms of a new Compact within that time, to jointly file with the Court a joint report
27 to that effect;

28 3. that if the parties have not agreed on the terms of a new Compact within the sixty

1 (60) days allowed for further negotiations, the Court will appoint a mediator to whom the Tribe
2 and the State each will submit its respective last, best offer for a Compact, and the mediator shall
3 select from the two proposed Compacts the one that best comports with the terms of IGRA and
4 any other applicable Federal law and with the Court's findings and order;

5 4. that the mediator shall submit to the State and Bear River the Compact selected by
6 the mediator, and if the State consents to the proposed Compact selected by the mediator during
7 the 60-day period beginning on the date on which the proposed Compact is submitted by the
8 mediator to the State, the proposed Compact shall be treated as a Tribal-State compact entered
9 into under paragraph (3);

10 5. that if the State does not consent to the proposed Compact submitted by the
11 mediator, Bear River shall be entitled to obtain from the Secretary of the Interior procedures
12 under which Bear River may conduct Gaming Activities on its Indian lands;

13 6. that in the event that a new Compact with the State or class III gaming procedures
14 prescribed by the Secretary of the Interior have not taken effect prior to June 30, 2022, Bear
15 River may continue operating Gaming Activities pursuant to its current Compact until the
16 effective date of either a new Compact or procedures prescribed by the Secretary of the Interior;

17 7. that the Court grant such other relief as it deems appropriate;

18 8. that Bear River be awarded its costs of suit; and

19 9. that the State reimburse the Indian Gaming Special Distribution Fund in an
20 amount equal to what the State has charged that Fund for its defense of this action, plus interest
21 accrued at the same rate as California law imposes on debts owed to the State.

22
23 Dated: August 11, 2020

Respectfully submitted,

24
25 By: /s/ George Forman

George Forman
FORMAN & ASSOCIATES
Attorneys for Plaintiff